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INTRODUCTION

Almost all of this course is a study of the sale of land, and mortgages. These two topics do not share much common ground of legal doctrine: the justification for combining them is functional: in practice they are often found together and must be considered together. These materials consist mainly of cases and legislation. This introduction is intended to show you some of the common documents, and to give you a fleeting glimpse at a small and simple part of the business background of the course. It is a description of a ficticious purchase of a house. For the sake of clarity and convenience, considerable liberties have been taken with practice; the correspondence and documents have been simplified and distorted in a fashion which might horrify an experienced conveyancer. Nevertheless, it was not for him that this introduction was prepared, and its purpose is not to teach you his skills. The dates are all in 1965, which may seem distant. That is the year in which this introduction was prepared, and the possible appeal of an apparently contemporary transaction has been sacrified to the need to avoid the costs of making the changes. The transaction would not be different now, five or six years later.

The story begins with Cycil Celler, who decided to sell his house. Why he reached this decision doesn't matter: He may have been shifted by his employer to another city; he may have been a young man with a growing family and needed a larger house; or he may have been older, his children may have grown up and left home, and he may have wished to move into an apartment. His house was worth about $30,000.00, and was subject to a mortgage under which about $15,600.00 was owed. He decided to retain a real estate agent to sell it for him. A few owners sell their own properties, to avoid paying a commission, but most properties are sold by agents. Most agents are members of local real estate boards, and their services are generally available only on the terms of standard form listing agreements.

The agent found eager purchasers, John and Judith Househunter. An agreement was entered into on June 17th, 1965, which contemplated completion, or closing, on September 15th, 1965. Some purchases, particularly those of consumer goods, are instantaneous transactions, but purchases of land always involve an interval between the time the agreement is entered into and the time the deal is closed. The reasons are fairly obvious. For example, the vendor may need time to find some new accommodations, the purchaser may need time to find money, both may need time to arrange for moving, and their lawyers will certainly need time to perform the various technical tasks which must be done. The purchase price was $30,000.00; John and Judith were to assume the existing mortgage, and pay the balance, about $14,400.00, in cash. They paid a deposit of $1,500.00, which was to be held by the agent. The remainder, about

$12,9000.00, was due on closing. John and Judith did not have $12,900.00; they had saved about $6,000.00, and they counted on borrowing the rest, about $7,000.00, from Judith's mother, Mrs. J.B. Kindly. The agent, after having sent copies of the agreement to the lawyers who were going to act for John and Judith, disappears from this story and this course.

The story now shifts to the lawyers' offices, and first to the firm acting for John and Judith. They were also acting for Mrs. Kindly, and there was therefore a possibility of a conflict in interest; the firm's position was explained in a letter to Mrs. Kindly.

The propriety of ever acting for the two parties that have potentially conflicting interests has recently been question in England by a section of the Law Society, although the Council of the Society seem to have affirmed the same principle that is expressed in the Ruling of the Law Society on page 5-I. The purpose of arranging the story in this introduction in a way that raises this question is simply to save valuable space.

With respect to John and Judith, their lawyers began by giving instructions concerning the deed to the firm acting for Cyril. Then they searched the title to the house (that is, they made searches in public offices to make determinations about Cyril's power to convey the house to John and Judith free from competing claims; these searches were necessary to make a comprehensive determination, although alone not enough); and made objections (that is, they asserted that for some specified reasons, Cyril could not, or might not, be able to convey the house free from adverse claims). As well, inquiries were made concerning building restrictions imposed by by-law, and municipal taxes. In so far as the firm acted for Mrs. Kindly, the search of title and the inquiries into zoning and taxes killed two birds with one stone, for a mortgagee is just as concerned with these matters as a purchaser. They prepared a mortgage, had it executed by John and Judith, and requested Mrs. Kindly to send the money for the loan.

Now the lawyers acting for Cyril. They wrote to the mortgagee requesting a copy of the survey and a statement of the amount which would be secured by the mortgage on the closing date. Then they prepared a deed, and a statement of adjustments showing the amount due on closing. Copies of both were sent to John and Judith's lawyers, and when the deed was approved it was executed by Cyril. The objections to title were answered.

The deal was now ready for the ritual of closing. The memoranda to the students include more detail than is usual, in order to suggest to you what happened. Afterwards, both firms reported to their respective clients. A few more details were tied up, and everyone lived happily ever after.

So far, nothing has been said about one very important matter, insurance. Most buildings are insured against fire; all mortgaged buildings are, simply because insurance is a protection which mortgagees demand and get. Cyril's home was insured by a policy which had about a year and a half to run. This policy was assigned to the purchasers and credit was given to Cyril in the statement of adjustments for the value of the remaining coverage. Of course, insurers are entitled to some discretion concerning the risks they insure, and therefore the insurance company was requested to consent to the assignment. It seems fairly clear that until it did consent, the purchasers did have enforceable protection.

June 18, 1965.

Mrs. J. B. Kindly,
247 Hightrees Avenue,
LANDAN, Ontario.

Dear Mom,

Guess what? We bought a house! It's in the Greenacres area, about fifteen minutes drive from John's office. It has four bedrooms - more than we need for now, but we'll probably be there for years and years. I won't tell you any more about it now, because you can look at it when you come to Taranta in July.

I hope you still want to lend us some money, because we counted on you. We need about $7,000.00. John feels we should be businesslike, and give you a mortgage. We are going to have John's old friend Donald Nodd as our lawyer, so he can probably do your mortgage as well.

I think I'm going to own the house for some silly tax reasons I can't understnad.

(Comments about Judith's baby boy are omitted.)

Love

"Judy"